

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant Philip K. Zietlow et al.

Group Art Unit: 1755

Serial No N/A

Examiner: N/A

Filed March 1, 2001

Docket: GMI 5183 D1

Title METHOD FOR PROCESSING AN AERATED CONFECTIONERY FOAM ROPE

Assistant Commissioner for Patents
Crystal Park One
Suite 520
Washington, DC 20231

PETITION UNDER §1.182 (37 C.F.R. §1.182)

PETITION

Applicant(s) hereby petition(s) for:

Granting a filing date and serial number for a new DIVISION utility patent application,

Reallocation of paid fees to the new division utility patent application as the filing fee therefor, and,

Other necessary and equitable relief.

PETITION FEES (37 C.F.R. §1.117(i))

The petition fee is paid as follows

- ☐ Enclosed is a check in the sum of \$130.00
☒ Charge Account 07-0900 the sum of \$130.00

A duplicate of this petition is attached

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OFFICE OF PETITIONS

Applicant: Phil K. Zietlow et al

Serial No.: N/A

Filing Date: March 31, 2001

Title: METHOD FOR PREPARING AN AERATED CONFECTIONERY FOAM ROPE

STATEMENT OF FACTS

Applicants filed utility patent application USSN 09/392,182 on September 9, 1999 entitled "METHOD AND APPRATUS FOR PROCESSING AN AERATED CONFECTIONERY FOAM ROPE" having attorney docket number "5183"

During prosecution, applicants received a three-way restriction requirement between

I - method of preparation claims (1-16),

II - a system for producing aerated confectionary ropes (claims 17-35), and

III - product claims (claims 36-40).

Applicants elected to proceed with prosecution of the method of preparation claims but traversed the restriction requirement at least insofar as it applied to Class II.

During further straightforward prosecution, the product claims (36-40) were canceled without prejudice by applicants' amendment and arguments for the patentability of method claims 1-16 were advanced by Applicants. Additional dependent method claims were introduced

By Examiners' amendment dated November 6, 2000, the title was changed to "Method for Processing An Aerated Confectionery Foam Rope". System of production claims (17-36) were cancelled.

In USSN 09/392,182, Applicants received a notice of allowance dated November 7, 2000

Applicants subsequently paid the issue fee timely on Jan 5, 2001 (by charge to General Mills' deposit account 07-0900). Along with the payment of the issue fee was a request for recordation of a patent assignment from the inventors to General Mills, Inc

On February 26, 2001, applicants received in USSN 09/392,182 a PTO notification that the application was to issue on March 6, 2001

Immediately thereafter, applicants prepared papers intending to file a division application before USSN 09/392,182 issued

Applicants intended to file a division from USSN 09/392,182 by papers sent to the USPTO by Express mail dated March 1, 2001 to be identified by attorney docket number GM1 5183 D1. These papers were date received by the PTO on March 2, 2001 but were date stamped

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by the PTO as "March 1, 2001", as evidenced by post card receipt (copy attached as Item 1) and thus were received by the PTO prior to the issuance of the patent on USSN 09/392,182

The papers included:

A transmittal cover letter authorizing an application fee in the amount of \$710.00 (by charge against General Mills, Inc. deposit account 07-0900) (copy attached as Item 2)

A copy of the specification, claims and drawings (not attached to this Petition) originally filed in USSN 09/392,182

A copy of the previously filed Declaration signed by the inventors (not attached to this Petition)

A postcard receipt (for attorney docket GMI 5183 D1) (copy attached as Item 3)

A preliminary amendment captioned GMI 5183 D1 canceling certain claims (the method of preparation and the product claims). The preliminary amendment also asked that the specification be amended to indicate that the present application be identified as a divisional of USSN 09/392,182 (copy attached as Item 4 with arrow highlight added herein for emphasis). The Preliminary amendment is captioned with the amended title in its parent application.

In the same packet of papers was a paper for filing in parent USSN 09/392,182 (attorney docket 5183) entitled "NOTIFICATION OF FILING OF CONTINUING, DIVISION OR CONTINUED-PROSECUTION APPLICATION" with the checkbox for division marked (copy attached as Item 5 with arrow highlight added herein for emphasis).

Without deceptive intent, applicants inadvertently used a transmittal cover letter erroneously characterizing the application as a Continuing Prosecution Application.

USSN 09/392,182 subsequently issued on March 6, 2001 as US 6,197,355, however, with the original title and not with the title as amended by the Examiner's Amendment.

Applicants have not filed a PCT application and nor other division, continuation nor substitute applications.

The filing fee in the amount of \$710.00 was applied against USSN 09/392,182 (for support, see the copy of the PTO deposit Account attached as ITEM 6 with arrow highlight added herein for emphasis)

Applicants subsequently filed a status inquiry dated June 1, 2001

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To date, applicants have not received a filing receipt for the desired continuation application.

Upon information and belief, applicants believe that the filed papers are presently associated with the file wrapper for USSN 09/392,182.

No other patent applications in this series are currently pending that applicant can use as a basis for a division application.

REMARKS

Except for the inadvertent use of the incorrect application transmittal cover sheet, the papers filed with the PTO indicate that Applicants clearly intended to file a division application and did not intend to file a continuing prosecution application.

Applicants did not attempt to abandon USSN 09/392,182 and fully intended that application to issue.

Usage of the continuing prosecution application transmittal cover letter was inadvertent, was used without deceptive intent and was the result of a clerical oversight.

The patent application papers should be accorded a filing date of March 1, 2001, since applicants properly used US Express mail.

The patent application papers were received by the PTO in fact on March 2, 2001 and thus before the issue date of USSN 09/436,823, now US 6,210,721.

Applicants can not use any currently pending patent application as a basis for filing a continuation application.

Applicants made one simple clerical error in using a wrong cover page for a transmittal form, namely: a CPA transmittal form, that was being phased out by the PTO.

An Information Disclosure Statement is not included with this Petition, but will be timely filed in the division application.

Applicants first became aware of the problem in June 2001 by virtue of not having received an expected filing receipt, contacted the PTO by June 1 by the status inquiry letter and subsequently via telephone in late June 2001 and have been informally trying since to resolve this matter with the PTO. Thus, Applicants have acted promptly upon becoming aware of the patent application's informalities to rectify any such informalities.

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PRAYER FOR RELIEF

WHEREFORE, Applicants respectfully petition for:

1. Grant of a filing date for a division application of March 1, 2001. To assist the PTO in this regard, attached is a replacement page of the transmittal first sheet attached (captioned "Substitute") for the inadvertently used transmittal cover sheet.
2. Recognition by the Patent Office that applicants did not abandon USSN 09/392,182, now US 6,197,355.
3. That the papers filed with the PTO having an effective filing date of March 1, 2001 be retrieved from the file wrapper of USSN 09/392,182 and be placed in the file wrapper of the division application.
4. That the \$710.00 intended to be made as an application filing fee and allocated to USSN 09/392,182 be re-allocated as an application filing fee for the division application or otherwise be credited to Deposit Account 07-0900.
5. That the PTO issue Applicants a filing receipt identifying the serial number for the division patent application recognizing the March 1, 2001 filing date.
6. Entry of the Preliminary amendment.
7. Other necessary and equitable relief as deemed available by the PTO.

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Applicants would like to thank Mr. Douglas McGinty (703-308-3805) for his guidance on how to best approach this matter which Applicants have followed. The time taken, and the care and attention given by Mr. McGinty is sincerely appreciated.

Respectfully submitted,

Philip Zietlow, et al

By their attorneys

Date: September 6, 2001



Name: John A. O'Toole

Reg. No.: 28,336

GENERAL MILLS, INC

P O Box 1113

Minneapolis, MN 55440

Telephone: (763) 764-2422

Facsimile: (763) 764-2268

e-mail: john.otoole@genmills.com

CERTIFICATE UNDER 37 C.F.R. 1.8 The undersigned hereby certifies that this paper or papers, as described herein, are being transmitted by e-mail to the Patent and Trademark Office to Mr. Doug McGinty on this 6th day of September, 2001



By

Name: John A. O'Toole

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SEP 11 2001

DEPT. OF PETITIONS

Applicant Philip K. Zietlow et al.

Serial No. N/A

Filing Date March 31, 2001

Title METHOD FOR PREPARING AN AERATED CONFECTIONERY FOAM ROPE

ITEM 1 Postcard Receipt

The U.S. Patent Office hereby acknowledges receipt of a patent application.

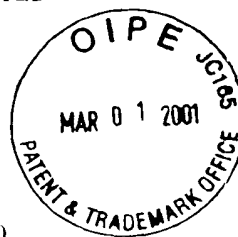
Title: METHOD FOR PROCESSING AN AERATED CONFECTIONERY FOAM ROPE

Inventors: Philip K. Zietlow, et al.

Total Pages: 25

Declaration Used

Drawings: 7 Sheets



Charge Filing fee to Deposit Account No. 07-0900.

Docket No. GMI 5183 D1

Please stamp serial number and return this card to:
General Mills, John A. O'Toole

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OFFICE OF PATENTS

Applicant: Philip K. Zietlow et al

Serial No.: N/A

Filing Date: March 31, 2001

Title: METHOD FOR PREPARING AN AERATED CONFECTIONERY FOAM ROPE

ITEM 2 - Transmittal Cover Letter

**CONTINUED PROSECUTION APPLICATION (CPA)
REQUEST TRANSMITTAL**

ASSISTANT COMMISSIONER OF PATENTS
BOX CPA
Washington, D.C. 20231
STR:

Attorney Docket No. 5183USAD1
First Named Inventor: ZIETLOW PHILIP K
Art Unit:
Examiner:

This is a request, under 37 CFR 1.53(d) (Continued Prosecution Application), for a Continuation application of:

Prior application Serial Number: 09/392,182

filed on: 9/9/99

entitled: METHOD FOR PROCESSING AN AERATED CONFECTIONERY FOAM ROPE.

1. ☐ Enter the unentered amendment previously filed on _____ under 37 CFR 1.116 in the prior nonprovisional application. Any additional filing fee required is included below.
2. ☒ A Preliminary Amendment is enclosed herewith. Any additional filing fee required by this amendment is included below.
3. ☐ This application is filed by fewer than all the inventors named in the prior application, 37 CFR 1.53(d)(4). Delete the following inventor(s) named in the prior nonprovisional application:
4. ☐ A new power of attorney or authorization of agent (PTO-SB-81) is enclosed.
5. ☐ An Information Disclosure Statement (IDS) is enclosed.
6. ☐ Small Entity Status:
 - a. ☐ A small entity status statement is enclosed.
 - b. ☐ A small entity status statement was filed in the prior nonprovisional application, and such status is still proper and desired.
 - c. ☐ Is no longer claimed.
7. ☐ An Extension of Time is filed concurrently herewith for the prior application.

Certificate of Mailing by "Express Mail"

Express Mail Mailing Label Number: EF142425882US

Date of Deposit: March 1, 2001

I hereby certify that this paper or fee is being deposited with the United States Postal Service By "Express Mail Post Office Addressee" Service under 37 CFR 1.15 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, DC 20231.

John A. O'Toole
Name of Individual Mailing

John A. O'Toole
Signature of Person Mailing

Applicant: Phil K. Zietlow et al

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Filing Date: March 31, 2001

Title: METHOD FOR PREPARING AN AERATED CONFECTIONERY FOAM ROPE

FILING FEES calculated below (after reduction for amendment as noted above):

<input type="checkbox"/>	Total Claims		Total Claims Subject to Fees: 0	\$
<input type="checkbox"/>	Independent Claims		Total Claims Subject to Fees: 0	\$
<input type="checkbox"/>	Multiple Dependent Claims			\$
<input checked="" type="checkbox"/>	Basic Filing Fee			\$ 710
<input type="checkbox"/>	Extension Fees			\$
	Sub-Total			\$ 710
<input type="checkbox"/>	Less: Small Entity Fee Reduction			\$
<input type="checkbox"/>	Assignment Recordal Fees			\$
	Total Fees			\$ 710

- ☒ A check in the amount of \$710.00 is enclosed (must at least cover the basic fee). If no check or an insufficient check is enclosed and a fee is due herewith, the Commissioner is authorized to charge any fee or additional fee due in connection herewith to Deposit Account No. 07-0900. A duplicate of this sheet is enclosed.
- ☒ In the event that a petition for extension of time is required to be submitted in the pending prior application, and in the event that a separate petition for the pending prior application is not filed on even date, applicant hereby petitions under 37 C.F.R.1.136(a) for an extension of time in the pending prior application of as many months as are required to render this submission timely. The Commissioner is authorized to charge any fee or additional fee due in connection with this communication to Deposit Account No. 07-0900. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

John A. O'Toole

By: John A. O'Toole
Registration No.: 28,336

Date: March 1, 2001

General Mills Number One General Mills Blvd P O Box 1113 Minneapolis, MN 55440-1113

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ITEM 3 - Postcard Receipt

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits. 5183 01		<p>A. Received by (Please Print Clearly) _____ B. Date of Delivery _____</p>	
<p>1. Article Addressed to:</p> <p>Assistant Commissioner for Patents Washington, DC 20231</p>		<p>C. Signature _____ X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>2. Article Number (Copy from service label) EF142425832US</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>USPS MAIL CENTER</p>			

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

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Filing Date: March 31, 2001

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ITEM 4 - NOTIFICATION OF FILING OF
CONTINUING, DIVISION OR CONTINUED-PROSECUTION APPLICATION
(one pages)

Applicant: Philip K. Zietlow et al.

Serial No.: N/A

Filing Date: March 31, 2001

Title: METHOD FOR PREPARING AN AERATED CONFECTIONERY FOAM ROPE

Practitioner's Docket No. 5183

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Philip K. Zietlow et al.
Serial No.: 09 / 392,182 Group No.: 1761
Filed: September 9, 1999 Examiner: M. Cano
For: METHOD FOR PROCESSING AN AERATED CONFECTIONERY FOAM ROPE
Assistant Commissioner for Patents
Washington, D.C. 20231

**NOTIFICATION OF FILING OF CONTINUING,
DIVISIONAL OR CONTINUED PROSECUTION APPLICATION**

Notification is hereby being made of the filing of a:

- ☐ continuation
☐ continuation-in-part
☒ divisional
☐ continued prosecution

application for this case

☒ concurrently herewith.

☐ on _____ Date

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SEP 11 2001

DEPT. OF PETITIONS

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10
(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

- ☐ deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231
37 CFR 1.8(a)
☐ with sufficient postage as first class mail. ☒ as "Express Mail Post Office to Addressee" 37 CFR 1.10*
Mailing Label No. _____ (mandatory) EF142425882US

TRANSMISSION

- ☐ transmitted by facsimile to the Patent and Trademark Office.

Signature

John A. O'Toole

(type or print name of person certifying)

Date: 3/1/01

***WARNING:** Each paper or fee filed by Express Mail must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

(Notification of Filing of Continuing, Divisional or Continued Prosecution Application [4-9] (page 1 of 2))

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Applicant Phil K. Zetlow et al

Serial No. N/A

Filing Date March 31, 2001

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ITEM 5 - Deposit Account Statement

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark OfficeAddress: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231MONTHLY STATEMENT
OF DEPOSIT ACCOUNTTo replenish your Deposit Account, detach and
return top portion with your check. Make check
payable to Commissioner of Patents & Trademarks

Account No.	070900
Date	3-30-01
Page	1

GENERAL MILLS INC
PATENT SECTION- LAW DEPT.
NUMBER 1 GENERAL MILLS BOULEVARD

MINNEAPOLIS MN 55426

FINA

PLEASE SEND REMITTANCES TO:
Patent and Trademark Office
P.O. Box 70541
Chicago, Ill. 60673

DATE POSTED			CONTROL NO.	DESCRIPTION (Serial, Patent, TM, Order)	DOCKET NO	FEE CODE	CHARGES/ CREDITS	BALANCE
MO	DAY	YR						
3	1	01	55	SUBSCRIPTION		561	12.00	44600.00
3	7	01	38	09392182	5183USA	131	710.00	43890.00
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3	26	01	8	75845419		363	100.00	39631.00
3	26	01	50	09746238	GM15265CIP	105	130.00	39501.00
3	26	01	51	09727172	5421USA	105	130.00	39371.00
3	28	01	49	PCT/US01/09324	5282PCT	150	240.00	39131.00
3	28	01	50	PCT/US01/09324	5282PCT	802	846.00	38285.00
3	28	01	51	PCT/US01/09324	5282PCT	800	382.00	37903.00
3	28	01	52	PCT/US01/09324	5282PCT	801	45.00	37858.00
3	28	01	53	PCT/US01/09324	5282PCT	899	492.00	37366.00
3	28	01	54	PCT/US01/09324	5282PCT	566	15.00	37351.00
3	29	01	63	SUBSCRIPTION		561	21.00	37330.00
3	29	01	152	1632471		372	100.00	37230.00
3	29	01	153	1632471		365	400.00	36830.00
3	29	01	154	1632471		381	100.00	36730.00
3	29	01	155	1632471		366	100.00	36630.00
AN AMOUNT SUFFICIENT TO				OPENING BALANCE	TOTAL CHARGES	TOTAL CREDITS	CLOSING BALANCE	
				44612.00	8216.00	234.00	36630.00	

Applicant: Philip K. Zietlow et al.

Serial No.: N/A

Filing Date: March 31, 2001

Title: METHOD FOR PREPARING AN AERATED CONFECTIONERY FOAM ROPE

Item 5- SUBSTITUTE Transmittal Cover Letter
(one pages)

SUBSTITUTE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

UTILITY PATENT APPLICATION TRANSMITTAL

ASSISTANT COMMISSIONER OF PATENTS
Box Patent Application
Washington, D.C. 20231

Attorney Docket No. 5183 D1
Prior Application Number: 09/392,182
Art Unit: 1755
Examiner: «EXAMINER»
PTO Customer Number: «CUSTOMERNO»

Sir:

Transmitted herewith for filing is a utility patent application

of: PHILIP K. ZIELOW et al.

for: METHOD FOR PROCESSING AN AERATED CONFECTIONERY FOAM ROPE

ENCLOSED are the following.

1. ☒ Specification, abstract and claims of 25 pages.
2. ☒ 7 sheets of ☒ formal ☐ informal drawings ☐ No drawings.
3. ☒ Declaration (original or copy) signed by the named inventor(s).
4. ☒ Preliminary Amendment
5. ☐ Information Disclosure Statement
6. ☐ Other:

NOTE the following:

7. ☐ Applicant is a small entity, which was established in parent application Serial No. <<TEXT>> and such status is still proper and desired.
8. ☒ The prior application is assigned to General Mills, Inc.
9. This application is a:
☒ Continuation ☐ Divisional ☐ Continuation in Part (CIP) of Prior Application 09/392,182
- Filed: September 9, 1999
10. ☒ Priority of the following application(s) is (are) claimed under 35 U.S.C. 119:

Serial No.	Date Filed	Country	Certified Copy of Priority Doc. Filed	
			USPN or PCT#	Date
09/392,182	9/9/99	US		

11. ☐ An Extension of Time is filed concurrently herewith for the parent application.
12. ☒ Cancel claims 1-16, 41-45 prior to calculation of the filing fee.

Certificate of Mailing by "Express Mail"

Express Mail Mailing Label Number: EF142425882US Date of Deposit: March 1, 2001

I hereby certify that this paper or fee is being deposited with the United States Postal Service By "Express Mail Post Office Addressee" Service under 37 C.F.R. 1.19 on the date indicated Above and is addressed to the Assistant Commissioner for Patents, Washington, DC 20231

John A. Twissie
Name of Mailing Individual

John A. Twissie
Signature of Mailing Individual

Page 1 of 2
Revised Transmittal Sheet doc dot